

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 666 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

JAGDISHKUMAR R THAKKAR

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Appearance:

MR SA PANDYA PUBLIC PROSECUTOR for Petitioner

MR DK MODI for Respondent No. 1

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/10/96

ORAL JUDGEMENT

The State of Gujarat has filed this present appeal challenging the judgment and order of acquittal dated 7.5.90 passed by the learned Judicial Magistrate First Class, Patan in Criminal Case No. 2213 of 1985 for the alleged offence under section 7(1) read with section 16(1)(I) of Prevention of Food Adulteration Act.

As can be seen from the complaint, the respondent no. 1 who is the accused in the instant case is having a grossary shop in the name of Uday Trading Co. The respondent no. 2, who at the relevant time serving as a Food Inspector, on 14.2.1985 took the sample of termaric powder from the shop of respondent no. 1. After deviding the sample in three parts in the presence of witness Balkirishan Keshavlal, one sample was sent to the Public Analyst for analysis and two samples were sent to the Local Health Authority, Mehsana. After receiving the report from the Public Analyst to the effect that the sample was adulterated one, the Food Inspector filed a complaint against the respondent no. 1. The learned Magistrate after considering the evidence on record acquitted the respondent no. 1 mainly on the ground that he has not been served with the notice under section 13(2) of the act and, therefore, his right to re-analysis the sample by the Central Food Laboratory is taken away. After having gone through the relevant provisions of the Act, I am of the opinion that the learned Magistrate has rightly acquitted the respondent no. 1. It is true that the complainant has sent a notice under section 13(2) of the Act alongwith the report of the Public Analyst by registered AD post addressed to the shop of the respondent no. 1. It is also true that the said registered AD cover has been received by one Thakkar Chhaganlal Lalji and has signed the acknowledgement of the registered AD post. However, in the instant case, the repondent no. 1 has denied to have received the notice and has pleaded total ignorance about his having any relationship with said Shri Thakkar Chhaganlal Laljibhai. Under the circumstances, the complainant ought to have established the nexux between them and having not done so, there is no option but to hold that the respondent no. 1 has not received the notice under section 13(2) which is a mandatory requirements of the law. In view of this, I see no reasons to interfere in the order of acquittal passed by the learned Magistrate.

In the result, there being no substance in the Appeal and the same is dismissed.

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